

COMMONWEALTH OF MASSACHUSETTS
Department of the Trial Court

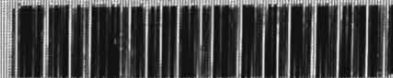
LAND COURT
FILED

2019 JUN -4 AM 9:42

Barnstable, ss

LAND COURT DEPARTMENT
No.

19 MISC 000009



THE HAVEN CENTER, INC. and
MACARTHUR PARK PLACE LLC,
Plaintiffs,

v.

TOWN OF BOURNE and PETER J.
MEIER, JUDITH MACLEOD-FROMAN,
JAMES L. POTTER, GEORGE G. SLADE,
and JARED P. MACDONALD, as
Members of the Board of Selectmen of the
Town of Bourne.
Defendants.

COMPLAINT

This is an action pursuant to Massachusetts General Laws c. 231A, §§ 1 et seq.; c. 240, §14A; c. 185 §1(j ½) and c. 249, §5.

PARTIES

1. Plaintiff The Haven Center, Inc. ("Haven" or "Plaintiff") is a Massachusetts corporation with a principal place of business at 245 Route 6A, Orleans, Massachusetts 02653.
2. Plaintiff MacArthur Park Place LLC is a Massachusetts limited liability company with a usual address of 10 Attucks Lane, P.O. Box W, Hyannis, Massachusetts 02601, and is a record title owner in fee of property at 340 MacArthur Boulevard, Bourne, Barnstable County, Massachusetts.
3. Defendant Town of Bourne is a Massachusetts municipal organization having an address of 24 Perry Avenue, Buzzards Bay, Massachusetts 02532.

4. Upon information and belief, Defendant Peter J. Meier is a member of the Board of Selectmen of Bourne and believed to reside at 95 Circuit Avenue, Bourne, MA.

5. Upon information and belief, Defendant Judith MacLeod-Froman is a member of the Board of Selectmen of Bourne and believed to reside at 10 Lucia Lane, Bourne, MA.

6. Upon information and belief, Defendant James L. Potter is a member of the Board of Selectmen of Bourne and believed to reside at 25 Settlers Way, Bourne, MA.

7. Upon information and belief, Defendant George G. Slade is a member of the Board of Selectmen of Bourne and believed to reside at 15 Eldridge Street Ext., Bourne, MA.

8. Upon information and belief, Defendant Jared P. MacDonald is a member of the Board of Selectmen of Bourne and believed to reside at 809 Scenic Highway, Bourne, MA.

GENERAL FACTUAL ALLEGATIONS

9. On November 8, 2016 the citizens of Bourne voted NO to Question 4, authorizing the legalization, regulation and taxation of recreational cannabis in the Commonwealth of Massachusetts.

10. On May 1, 2017, the Town approved a temporary moratorium until November 30, 2018 on the use of land or structures for any recreational marijuana establishment (05-01-2017 Article 23).

11. On March 26, 2018, the Town defeated a proposed zoning amendment to ban non-medical marijuana establishments by a vote of 128 in favor and 247 against (03-26-2018 Article 1).

12. On March 26, 2018, the Town defeated a proposed general bylaw amendment to ban all non-medical marijuana uses by a vote of 115 in favor and 215 against (03-26-2018 Article 2).

13. In or about April 2018, the Cannabis Control Commission began accepting applications for the issuance of recreational use licenses. Chapter 94G, Section 5(b)(2), governing the issuance of licenses, states:

“(b) The commission shall approve a marijuana establishment license application and issue a license if:

(2) the commission is not notified by the city or town in which the proposed marijuana establishment will be located that the proposed establishment is not in compliance with an ordinance or bylaw consistent with Section 3 of this chapter and in effect at the time of the application;”

14. Between April 2, 2018 and November 28, 2018, Haven negotiated with the Board of Selectmen through the Bourne Town Administrator concerning a proposed Host Community Agreement for medical and non-medical cannabis retail sales at 340 MacArthur Boulevard.

15. On September 25, 2018, Haven filed with the Bourne Planning Board a so-called “Approval Not Required” perimeter plan of the property at 340 MacArthur Boulevard in Bourne pursuant to G.L. c. 41, §81P.

16. On September 27, 2018, Haven filed with the Bourne Town Clerk written notice of the filing of the Approval Not Required plan pursuant to G.L. c. 41, §81T, thereby vesting the property with the three-year “use-freeze” protections of G.L. c. 40A, §6.

17. On October 25, 2018 the Bourne Planning Board adopted the Approval Not Required Plan, which was subsequently recorded with the Barnstable County Registry of Deeds with Book 677, Page 6.

18. Haven invested substantial sums of money and incurred substantial financial and other risks in the acquisition of property rights in 340 MacArthur Boulevard, in obtaining investment funds, in entity organization, in engineering, legal and permitting fees and costs for anticipated adult use retail sales at this location, and in foregone opportunities for operations in

other communities, all in reliance upon March 26, 2018 Town consideration and defeat of zoning and general bylaw cannabis prohibitions and in reliance upon ongoing negotiations for a Host Community Agreement with the Town. These sums have and will total millions of dollars.

19. On October 1, 2018, the Town adopted by a majority vote a citizens' petitioned article to amend the Bourne Town Code general bylaws to prohibit all non-medical marijuana uses in the Town. (10-01-2018 Article 14).

20. On October 1, 2018, the Town failed to adopt a proposed amendment of the Bourne Zoning Bylaw which would permit and regulate medical and non-medical cannabis uses in the Town. (10-01-2018 Article 15).

21. On November 28, 2018 as a direct result of the October 1, 2018 Article 14 vote, the Bourne Town Administrator informed Haven that the Board of Selectmen would no longer "work with" Haven regarding non-medical cannabis retail sales in Bourne.

22. Since passage of a general bylaw (as opposed to an amendment to a zoning bylaw pursuant to G.L. c. 40A §5) would not exempt or protect pre-existing uses such as those anticipated by the plaintiffs, Haven is in jeopardy of significant financial and other losses if the general bylaw is enforced by the Town.

23. The enforcement of the October 1, 2018 Article 14 general bylaw may have the effect of preventing Haven from obtaining approval of a licensing application for a recreational marijuana establishment under said Chapter 94G, §5(b)(2), therefore Haven is in doubt whether to commit significant resources to seeking such approvals.

24. The potential delay in obtaining Cannabis Control Commission licensing approval created by the adoption of the October 1, 2018 Article 14 general bylaw will put Haven at a significant competitive business disadvantage relative to licensees in other cities and towns that

have not attempted to prohibit cannabis uses through this questionable general bylaw mechanism.

25. Given that the October 1, 2018 Article 14 general bylaw generally prohibits the location and operation of non-medical cannabis uses in the Town, its adoption and enforcement violates G.L. c. 40A.

CLAIMS FOR RELIEF

COUNT I PETITION FOR JUDICIAL DETERMINATION OF VALIDITY OF GENERAL BYLAW PURSUANT TO G.L. c. 240, 14A

26. Plaintiffs incorporate herein by reference the allegations made in the preceding paragraphs of this Complaint.

27. The adoption of Warrant Article 14 as a general bylaw violates G.L. c. 94G, §3, which requires that ordinances or bylaws limiting the number of licenses or prohibiting cannabis uses generally be adopted as zoning bylaws.

28. The adoption of Warrant Article 14 as a general bylaw violates G.L. c. 40A, §5 and cases decided thereunder, which require that ordinances or bylaws locating or prohibiting uses of land generally be adopted as zoning bylaws.

29. The adoption of Warrant Article 14 at the October 1, 2018 special town meeting violates the procedural requirements for adoption of a zoning bylaw set forth in G.L. c. 40A §5, including the requirement of a published notice and Planning Board public hearing and report, and consideration of the vote within two years of the March 26, 2018 Article 1 unfavorable action on a proposed zoning amendment to prohibit all non-medical cannabis uses.

30. Plaintiffs are entitled to a declaration that the general bylaw prohibition set forth in the October 1, 2018 Warrant Article 14 is invalid.

31. Plaintiffs are entitled to a declaration that the Town may not adopt a general bylaw which purports to generally prohibit cannabis uses in the Town except as a zoning bylaw under the procedural requisites of G.L. c. 40A, §5.

**COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF GENERAL BYLAW PURSUANT
TO G.L. C. 231A, §§ 1 ET SEQ.**

32. Plaintiffs incorporate herein by reference the allegations made in the preceding paragraphs of this Complaint.

33. An actual controversy exists between Plaintiffs and the Town concerning the proper application of G.L. c. 40A and G.L. c. 94G, §3 to the October 1, 2018 Warrant Article 14, and (b) Plaintiffs' land use rights with respect to their project.

34. The adoption of Warrant Article 14 as a general bylaw violates G.L. c. 94G, §3, which requires that ordinances or bylaws limiting the number of licenses or prohibiting cannabis uses generally be adopted as zoning bylaws.

35. The adoption of Warrant Article 14 as a general bylaw violates G.L. c. 40A, §5 and cases decided thereunder, which require that ordinances or bylaws locating or prohibiting uses of land generally be adopted as zoning bylaws.

36. The adoption of Warrant Article 14 at the October 1, 2018 special town meeting violates the procedural requirements for adoption of a zoning bylaw set forth in G.L. c. 40A §5, including the requirement of a published notice and Planning Board public hearing and report, and consideration of the vote within two years of the March 26, 2018 Article 1 unfavorable action on a proposed zoning amendment to prohibit all non-medical cannabis uses.

37. Plaintiffs are entitled to a declaration that the general bylaw prohibition set forth in the October 1, 2018 Warrant Article 14 is invalid.

38. Plaintiffs are entitled to a declaration that the general bylaw prohibition set forth in the October 1, 2018 Warrant Article 14 cannot operate to undermine their rights under the zoning bylaws.

39. Plaintiffs are entitled to a declaration that the Town may not adopt a general bylaw which purports to generally prohibit non-medical cannabis uses in the Town except as a zoning bylaw under the procedural requisites of G.L. c. 40A, §5.

COUNT III
DECLARATORY JUDGMENT PURSUANT TO G.L. c. 231A, §§1 ET SEQ.
THAT BOURNE SELECTMEN IMPROPERLY DELAYED AND REFUSED
APPROVAL OF A HOST COMMUNITY AGREEMENT AND IMPROPERLY
DEMANDED COSTS IN EXCESS OF THOSE PERMITTED UNDER G.L. c. 94G,
§3(d)

40. Plaintiffs incorporate herein by reference the allegations made in the preceding paragraphs of this Complaint.

41. Haven attempted in good faith to negotiate a so-called Host Community Agreement with the Bourne Selectmen.

42. The Selectmen demanded as a condition of execution of such an agreement payments to the Town for medical and non-medical retail sales in excess of three percent of gross sales, including the following:

A. Medical Retail Sales:

1. Annual payments of 3.0 percent of gross revenues; and
2. "Donations" for year 1 of the greater of \$150,000 or 3% of gross revenues; and
3. "Donations" for year 2 of the greater of \$150,000 or 3.5% of gross revenues; and
4. "Donations" for years 3, 4 and 5 of the greater of \$225,000 or 3.75% of gross revenues; and
5. An escalation of "Donations" of 3.0% in each year after year 5;
6. "Transporter Payments" of 5% of gross revenues; and
7. Annual charitable donations of \$15,000;

B. Non-Medical Retail Sales Additional Payments:

1. Annual payments of 3.0 percent of gross revenues; and
2. "Transporter Payments" of 7% of gross revenues.

43. Additionally, the Town demanded of Haven annual payments of 18% of gross revenues in the event that Haven had not created twelve full time jobs within 18 months of execution of a Host Community Agreement.

44. Said payment demands grossly and substantially exceed those amounts permissible under G.L. c. 94G, §3(d).

45. Haven has repeatedly requested that the Selectmen place on their agenda, and review and negotiate in good faith a Host Community Agreement.

46. The Selectmen have failed and refused to place the matter on their agenda or execute a Host Community Agreement containing terms conforming to G.L. c. 94G, §3(d).

47. The Selectmen have an obligation under G.L. c. 94G, §3 to timely hear requests for Host Community Agreements, and to execute Host Community Agreements with applicants that meet the requirements therefor.

48. The Selectmen have an obligation under G.L. c. 94G, §3 not to require payments in excess of those set forth in G.L. c. 94G, §3(d) as a condition of execution of a Host Community Agreement.

49. Haven has met and does meet all requirement for participation in a Host Community Agreement with the Town of Bourne.

50. The Selectmens' refusal to consider or execute a Host Community Agreement violates the provisions of G.L. c. 94G, §3.

51. The Selectmen's refusal to consider or execute a Host Community Agreement is delaying and preventing Haven from seeking and obtaining a license from the Cannabis Control Commission for adult retail sales of cannabis in Bourne.

52. Haven is being harmed thereby.

53. There is an actual controversy between Haven and The Town of Bourne whether the Selectmen may refuse to hear, consider or execute a Host Agreement, and whether the Selectmen may require payment of amounts in excess of those set forth in G.L. c. 94G, §3(d).

COUNT IV
PETITION FOR CERTIORARI (MANDAMUS) PURSUANT TO G.L. c. 249, § 5
FOR ORDER THAT BOURNE SELECTMEN APPROVE AND EXECUTE A
HOST COMMUNITY AGREEMENT WITH HAVEN

54. Plaintiffs incorporate herein by reference the allegations made in the preceding paragraphs of this Complaint.

55. The Board of Selectmen have ministerial and legal obligations and duties created by G.L. c. 94G, §3 to hear, consider, negotiate in good faith and execute Host Community Agreements with acceptable applicants.

56. The Board has no discretionary authority to refuse to schedule a hearing regarding consideration of Host Community Agreement.

57. The Board has no discretionary authority to refuse to execute a Host Community Agreement on the basis of an applicant's refusal to pay fees in excess of those permitted under G.L. c. 94G, §3(d).

58. The Board has no discretionary authority to refuse to execute a Host Community Agreement on the basis of the passage of a general bylaw prohibiting non-medical cannabis uses.

59. Haven has met all requirements for the issuance of a Host Community Agreement.

60. Haven is entitled to a hearing by the Board of Selectmen and to receive an executed (by the Board) Host Community Agreement meeting the provisions of G.L. c. 94G, §3.

61. Haven has no plain or adequate remedy at law.

62. Mandamus relief by this Court will be an effective remedy.

PRAYER FOR RELIEF

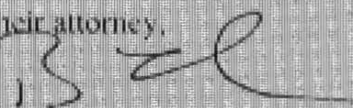
WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Enter a declaratory judgment and order that:
- a. The October 1, 2018 Article 14 general bylaw is invalid and vacated;
 - b. Any bylaw purporting to generally prohibit cannabis uses in all or any portion of the Town must be adopted as a zoning bylaw pursuant to G.L. c. 40A, §5.
 - c. Plaintiffs' land use rights to develop 340 MacArthur Boulevard for retail cannabis sales are not affected by the October 1, 2018 Article 14 general bylaw;
 - d. The Town must continue to accept and process applications, and must issue properly obtained development and operation permits for non-medical marijuana uses notwithstanding the October 1, 2018 Article 14 general bylaw;
 - e. The Board of Selectmen must timely hear, review, negotiate in good faith and execute a Host Community Agreement with Haven; and
 - f. The Board of Selectmen's demands for payments in excess of three percent of gross sales exceeds their authority under G.L. c. 94G, §3(d).
- (2) Enter such other relief as this Court deems fair, equitable and just.

Respectfully submitted this January 4, 2018.

PLAINTIFFS THE HAVEN CENTER, INC., and
MACARTHUR PARK PLACE LLC.

by their attorney,



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